

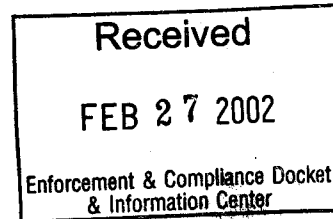
EC-2000-007
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VIA FEDERAL EXPRESS

27 February 2002

Enforcement and Compliance Docket and Information Center (Mail Code 2201 A)
Attention: Docket No. EC-2000-007
U. S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, D.C. 20460

**Comments of BP America, Inc. Concerning EPA's
Establishment of Electronic Reporting; Electronic Records Proposed Rule
(66 FR 46162-46195; August 31, 2001)**

Dear Sir or Madam:

BP America, Inc. is pleased to offer the following comments on EPA's CROMERRR proposed rule. BP America, Inc. is the organizational arm of BP plc that owns and operates the US assets formerly owned by our predecessor companies BP, Amoco, Arco, Vastar, and Burmah Castrol. While BP plc is based in London, over 40% of our assets and employees are in the United States, and we are the US's largest producer of oil and gas. We have thousands of US sites and facilities that are regulated by EPA and would be required to comply with the full extent of CROMERRR.

BP America, Inc. has actively participated and commented at EPA sponsored CROMERRR open meetings, both at Chicago, IL (11/9/01) and Irving, TX (1/31/02). We appreciate this opportunity to provide written comments also.

BP America, Inc. participated in the development of and fully supports the comments furnished to you by the American Petroleum Institute and by the American Chemistry Council. These trade associations' comments are quite detailed and represent the results of months of intense discussions with very concerned member company representatives.

We urge you to consider them carefully during your deliberations.

In addition, BP America, Inc. emphasizes the following written comments:

1. BP supports the API and ACC requests for withdrawal of the CROMERRR proposed rule with eventual reworking of the electronic reporting and signature section of the rule. EPA should withdraw the recordkeeping section (Part C) at an absolute minimum. We request that the remaining 3 sections (Reporting, e-Signature, and State's Actions) also be withdrawn, and then reworked into a totally new rule.

The supporting reasons are discussed in detail in the API and ACC written comments. A few are summarized herein:

- In the preamble, CROMERRR was portrayed as a "voluntary" program, thus causing most of the regulated community and States to *not* review CROMERRR for significant impact. They were *not* prepared to comment by either the original or first extended deadline. The reporting community has been misled as to overall impact.
- The rule would create an extremely costly burden (over \$68 billion) on the regulated community and EPA's economic analysis is deficient in several respects with regard to this. EPA did not comply with RFA (Regulatory Flexibility Act) and SBREFA (Small Business Regulatory Efficiency and Fairness Act) requirements.
- Extensive modification to existing electronic records generation and maintenance systems are impracticable. Currently, it is projected to take the pharmaceutical companies 7 more years to fully comply with a similar FDA rule promulgated about 3-4 years ago. We believe that our industry is even more complex regarding overall compliance with such a rule.
- Government Paperwork Elimination Act (GPEA) states that electronic records requirements should be "no less favorable" than those afforded paper records. That is surely not the case with CROMERRR.
- CROMERRR does not support the current Bush administration policies.

2. BP believes that withdrawing the entire proposed rule, instead of just the recordkeeping portion, is the right thing to do. CROMERRR is too complex and tries to cover too much at one time. EPA needs to rewrite all portions of the rule in a simple presentation that is not prescriptive, but rather simply permits e-reporting and e-signature.

This became obvious, when BP participated at the CROMERRR public hearing in Chicago on 11/9/02. A few comments by the EPA staff indicated that even they had some misunderstandings of what the rule stated "in black and white." Specific difficulties include:

- The regulated community relies on the black and white version to legally define the rule with which to comply. This is what we are being held accountable to when implementing the rule. We all need to read the same words and have the same understanding of the words that make up the "letter of the law."
- EPA has indicated that the e-signature was to be no more burdensome than the current written signature. However, we know that e-signature is more burdensome.
- EPA has indicated that the rule was not meant to require the detailed auditable documentation all the way back to the origin of the electronic data. Rather was meant to apply only to the data in the final report.
- EPA has indicated that CROMERRR would not interfere with States' current reporting. EPA appeared to be unaware of the extent that the reporting community and

States are already using electronic reporting and electronic recordkeeping. The rule is written in such a way as to not allow electronic recordkeeping for specific reporting "until" EPA had developed and approved the specific reporting package. This wording would disallow our existing electronic reporting to the States and also would disallow our current use of computers and electronic recordkeeping (which is non-compliant with CROMERRR). Nearly all of the data managed by US companies of any size are being managed electronically. Therefore, according to CROMERRR, most electronic recordkeeping would be out of compliance, as would all electronic reporting to the State agencies. This is contrary to what EPA staff members said in Chicago.

- EPA has stated that all the States were fully aware of CROMERRR because 35 States worked directly with EPA on CROMERRR during the past 2 years. We have no doubt that 35 different State agencies' staff worked on CROMERRR with EPA. We believe that they probably worked specifically on the data base, security, and data transfer issues (such as EDI and CDX). States are not only concerned with ultimate secure data transfer to the EPA, but are also very interested in their statewide data collection programs needed to obtain data from the regulated community in the first place. States had no idea how costly CROMERRR would be to their existing and future data management programs. They, like the rest of the stakeholders, believed that CROMERRR was "voluntary," and it is not.

3. The primary purpose of this proposed rule is to allow for electronic reporting; including data, signatures, and recordkeeping; so as to comply with Government Paperwork Elimination Act (GPEA). This should be done using the most direct and simple approach that supports existing legislation.

EPA has sought comment on possible alternatives to nine specific criteria regarding validity of electronic records within CROMERRR. It is premature to attempt to modify these and other aspects of CROMERRR via this approach. Rather, we suggest that EPA withdraw the complex and highly prescriptive CROMERRR proposed rule and replace it with the simplest and most efficient new rule developed using the extensive feedback from this CROMERRR rule-making process. Comments on the four specific parts of CROMERRR follow::

- **Electronic Reporting (CROMERRR, Part A)**—Keep it simple. Design the rule to allow use of electronic generation and submission of data for all environmental (40CFR) reporting. Electronic reporting is currently being required by several states for some environmental reporting. EPA has probably approved these state programs that require electronic reporting. As stated by EPA at the 11/9/01 Chicago open meeting, the electronic reporting should be "no more onerous than the existing paper reporting". Thus EPA should not be overly prescriptive by defining the details of the electronic reporting, but rather simply legalize and allow the reporting to be done electronically or magnetically.

- **Electronic Signatures (CROMERRR, Part B)**—Keep it simple. Withdraw and eliminate the detailed, overly prescriptive e-signature guidelines contained in CROMERRR. Write a rule that simply authorizes e-signature, making it legally equivalent to a hardcopy, written signatures. Don't be any more prescriptive. We propose the following simple solution, one that works in other areas. Use the approach and structure found in PL 106-229 (E-Signature Rule, 6/30/2000). This existing e-signature rule specifically excludes using that rule to provide valid e-signatures to "environmental reporting". Take the existing e-signature rule and delete that environmental reporting exclusion and call it your own.

- **Electronic Recordkeeping (CROMERRR, Part C)**—Keep it simple. Make no changes to existing recordkeeping that are subject to EPA auditing. Use the existing data recordkeeping requirements that exist for paper reporting. The regulated community has been keeping most of their data electronically for several prior reporting years. It has met EPA recordkeeping criteria in the past, so there is no need to change this now. If there is a need to update old rules that currently require paper records, then simply write a brief rule that accepts electronic or magnetic recordkeeping as a direct substitute for and equivalent to any paper records previously required by any and all 40 CFR rules. Follow any specific recordkeeping requirements already found in existing rules governing the various EPA reporting programs. Again, as stated by EPA at the 11/9/01 Chicago open meeting, electronic recordkeeping should be “no more onerous than the existing paper recordkeeping.” It may be necessary to separate recordkeeping from reporting in this rulemaking process. We support doing this as opposed to issuing a rule with confusing and unworkable recordkeeping provisions.

- **States' Data Management and Data Submission (CROMERRR, Part D)**—Keep it simple. Allow States to continue developing environmental reporting programs for EPA approval. Some of these existing State programs already include electronic reporting. Allow the States to continue using their approved, authorized programs for environmental reporting. Anything done in Parts A-C that jeopardizes current reporting by the regulated community will have a direct impact on the 70% or so of the 40 CFR reporting which is managed by the States.

4. BP is opposed to regulation by guidance. EPA needs to follow the prescribed rule-making process, allowing the regulated community to comment and have their comments and concerns addressed.

It is our understanding that EPA is proposing to resolve part of the CROMERRR controversy via “guidance” rather than “rulemaking”. Where appropriate, required rulemaking *should* be used to ensure public involvement. Consider the case in point: CROMERRR. The “rule-making” process for CROMERRR has taken about 2 years to get to this point, with a proposed rule that is very problematic. If CROMERRR had been promulgated by “guidance”, then the regulated community and other stakeholders would *not* have had the legal right to formally comment, and we would be regulated by this version of CROMERRR at a cost of over \$68 billion to the regulated communities. Rulemaking process should be followed when appropriate.

5. BP believes that there are sufficient rules and guidance in place to prevent recordkeeping fraud. Our policy is to comply with EPA rules and regulations. We are subject to and cooperate with EPA audits.

There needs to be reasonable trust between EPA and the reporting community. The reporting community, for the most part, expends significant effort to manage our environmental data within the rules and guidelines of EPA and state environmental programs.

We recognize that there may be an occasional unethical person in the regulated community, but this is the rare exception. It is not justified to burden US companies with over \$68 billion investment in an attempt to address a few individuals. There are audit processes in place for EPA or DOJ to review any facility's data for accuracy and compliance. Our industry's contention is that electronic fraud, because of all the various data links and people involved in generating and archiving electronic data, is more difficult

to accomplish and hide than is paper fraud. We do not expect electronic fraud to be any higher than current paper fraud. Many US companies have been using computers to manage the bulk of their data for the past 10-20 years? so electronic recordkeeping is not new.

6. BP believes that CROMERRR is cost prohibitive and adds little, if any, value to the overall reporting process. EPA can obtain over 90% of the anticipated benefit of electronic reporting by simply expanding the current reporting process to include "mandatory" magnetic reporting. This eliminates most of the paperwork and provides a set of magnetic/electronic data submission on diskette. There would be minimal human intervention.

The recordkeeping portion (Part C) of CROMERRR alone will easily cost BP over \$200 million to implement. This is comparable to our total US Y2K project costs. The cost of this additional US recordkeeping is about 14% of BP's worldwide \$1.4 billion spent for all environmental operations in 2000. The only value for BP's complying with CROMERRR would be the cost savings of postage for reporting. At some of our larger sites, we have identified over 320 different computer programs that are used in support of environmental reporting, and all would need to undergo costly and time consuming modifications to comply with CROMERRR. For example, just one of our TRI computer programs alone would cost more than \$250,000 to update to CROMERRR standards.

Maintenance, archiving, and retrieval of data to fully meet CROMERRR requirements is also prohibitive, not only from a direct cost basis, but also from a functionality/efficiency basis. Computer systems will need to manage significantly larger databases that will slow programs down considerably. This will adversely impact actual process operations in our complex refineries and chemical plants, probably limiting productions and adversely affecting "safety" of the overall unit operations.

These are real costs, which in a free market will be passed on to the consumer. This is a large price for the US citizens to pay for such minimum benefits. Environmental expenditures, as with any expenditures, need to be cost effective.

BP believes that EPA is required to complete a full cost/benefit analysis as part of CROMERRR or any replacement rule/guidance.

BP has already implemented 100% magnetic reporting of TRI from our approximately 60 different reporting facilities. Canada required magnet data submission from all facilities from the very beginning of their national emissions inventory program, which was patterned after US EPA's TRI program. They did not accept paper submissions. To easily achieve a 100% reduction in TRI paper submissions, simply pass a rule that TRI must be submitted either electronically OR magnetically.

7. BP suggests that EPA perform a "visual" beta test of their CROMERRR proposed rule within their own varied EPA administrative offices before attempting to implement this rule on the entire regulated community. This will provide EPA with a better understanding of the overall impact, excessive cost in both dollars and resources, extensive time to implement to level of compliance, and the minimum benefit of implementing the current version of the proposed rule.

The recordkeeping portion (Part C) of CROMERRR would require that nearly every computer program would have to comply with the user/date/time stamping of every data entry. And with the proposed definition of "electronic data", EPA would have to modify the Word Perfect program, spreadsheet programs, Tanks, Chem 8, all web pages, virtually all programs, and even their voice mail systems which are being managed by a computer system and recording environmental information. Every contractor used by EPA would have to do the same. That would include any electronic environmental data managed by DOJ as well.

In summary, BP America, Inc. appreciates the opportunity to provide these comments to EPA. Again, we ask that CROMERRR be withdrawn, with the reporting and e-signature portions of the proposed rule to be rewritten as a simple, non-prescriptive rule. Should you have any questions or require clarification of our comments, please feel free to contact me directly, or Richard J. Lowery by phone at 630-434-6278 or by email at loweryrj@bp.com.

Best regards,

[original signed by Donna Kraisinger]